



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **13th day of September, 2002**

Florida Air Transport, Inc.

**Violations of 49 U.S.C. §§ 41101
and 41712**

Docket OST 2002-12273

Served: September 13, 2002

CONSENT ORDER

This consent order concerns unauthorized service by Florida Air Transport, Inc., which performed operations as a common carrier without the requisite economic authority from the Department. Florida Air is an operator of commercial services with large aircraft under 14 CFR Part 125. Authority under this Federal Aviation Administration provision, however, is strictly limited to private carriage operations. In commercial operations with large aircraft which are offered to the general public, by contrast, the carrier is operating in common carriage, and must hold economic authority from the Department under 49 U.S.C. § 41101. Although Florida Air failed to obtain this authority, it has nonetheless performed significant common carriage service in 1999 and 2000. The unauthorized service as a common carrier, in addition to violating the certificate requirements of Title 49, constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

Florida Air has provided service since 1996 as a Part 125 carrier, generally with a fleet consisting of a single aircraft. During 1999 and 2000, a majority of Florida Air's service was pursuant to a single wet lease agreement with a foreign air carrier. Such service on behalf of a common carrier is itself common carriage.

Common carriage, in the context of air service, consists of the holding out or provision of air transportation to the general public for compensation or hire. The primary issue in this case, as in most disputes regarding the distinction between common and private carriage, is whether the carrier is "holding out" or providing service to the public.¹ Although Florida Air apparently did not engage in any direct advertising of its services to the public, it has engaged in common carriage by operating under contracts with a

¹ See, *Las Vegas Hacienda, Inc., v. Civil Aeronautics Board*, 298 F.2d 430, 434 (9th Cir. 1962); *Intercontinental, U.S., Inc., Enforcement Proceeding*, 41 CAB 583, 601 (1965); and *Airmark Aviation, Inc., Violations of 49 U.S.C. § 1372* (1992).

foreign air carrier which held out air service to the public. The Aviation Enforcement Office, therefore, believes that Florida Air has engaged in common carriage without appropriate economic authority.

We view seriously Florida Air's violations of the Department's licensing requirements. We have carefully considered the facts of this case, including the company's explanation, and continue to believe enforcement action is necessary. Florida Air Transport, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 by engaging in common carriage directly or indirectly, and to an assessment of \$50,000 in compromise of potential civil penalties. Of this penalty amount, \$25,000 shall be paid according to the schedule set out in the ordering paragraphs *infra*; the remaining \$25,000 shall be suspended for one year following the service date of this order, and then forgiven unless the carrier violates the order's cease and desist provision within that period or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$50,000 penalty shall become due and payable immediately, and Florida Air Transport may be subject to further enforcement action. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future air transportation operations without appropriate economic authority by Florida Air as well as other companies.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;
2. We find that Florida Air Transport, Inc., violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that by engaging in the conduct described in paragraph 2, above, Florida Air Transport, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Florida Air Transport, Inc., is ordered to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712;
5. Florida Air Transport, Inc., is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of that penalty amount, \$25,000 shall be due and payable according to the following schedule: an initial payment of \$5,000 shall be due within 30 days of the service date of this order; four additional payments of \$5,000 each shall be due at two month intervals, with the first such payment due 90 days after the service date of the order, the second 150 days after the service date; a third 210 days after the service date; and a fourth and final payment due 270 days after the service date. The remaining \$25,000 shall be suspended for one year following service of this order, and then

forgiven, unless Florida Air Transport violates this order's cease and desist provisions within the suspension period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$50,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject Florida Air Transport, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

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Deputy General Counsel

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